In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1667

BAXTER LOVE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was convicted in the Eastern District of Michigan of knowingly making a false statement in violation of 18 U.S.C. 922(a)(6) and was sentenced to imprisonment for one year. The court of appeals affirmed.

The evidence at trial showed that petitioner purchased a paratrooper carbine from a licensed gun dealer on May 2, 1970. The clerk who waited on petitioner testified that, after she had filled out her

portion of the prescribed Form 4473 then in effect (Pet. App. C), she gave the form to petitioner to read and sign. Petitioner appeared to read it for several minutes and then signed it (Tr. 30-33, 49-51, 53). The form contains a statement by which the purchaser certifies *inter alia* that "I am neither under indictment for, nor have I been convicted of, a crime punishable by imprisonment for a term exceeding one year" (Pet. App. 10). Petitioner had in fact been convicted in Detroit Recorder's Court of attempted larceny from the person, a felony punishable by imprisonment for a term exceeding one year (Tr. 116).

Petitioner brought out before the jury the fact that Form 4473 had been revised a month after petitioner made his purchase (Tr. 117-121).[1] The judge charged the jury that, to convict, it had to find that defendant knowingly made a false statement and explained that knowingly meant that the act had to be done intentionally and not because of mistake or accident (Tr. 146-147).

Petitioner argues that Form 4473, at the time he signed it, was so unclear that the jury could not properly have found that he knowingly made a false statement. As the court below pointed out, while

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[1] The new form appears at Pet, App. 12-13. It explicitly states that one who gives an affirmative answer to the questions listed is prohibited from purchasing a firearm and that a false answer would subject the signer to prosecution. It also explicitly states with respect to prior convictions that the actual sentence given by the judge is immaterial so long as the crime potentially carried a penalty of more than one year.

the form could be clearer and has been clarified, it was sufficient to support the jury's finding that petitioner was well aware that he was making a false certification.

It is therefore submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

AUGUST 1972.

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